

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATURAL GROCERS; CITIZENS FOR GMO
LABELING; LABEL GMOS; RURAL
VERMONT; GOOD EARTH NATURAL
FOODS; PUGET CONSUMERS CO-OP;
CENTER FOR FOOD SAFETY; NATIONAL
ORGANIC COALITION,

Plaintiffs-Appellants,

v.

THOMAS VILSACK, Secretary of the United
States Department of Agriculture; BRUCE
SUMMERS, Administrator of the Agricultural
Marketing Services; UNITED STATES
DEPARTMENT OF AGRICULTURE,

Defendants-Appellees,

AMERICAN FARM BUREAU FEDERATION;
UNITED STATES BEET SUGAR
ASSOCIATION; AMERICAN SUGARBEET
GROWERS ASSOCIATION,

Intervenor-Defendants-Appellees.

No. 22-16770

UNOPPOSED MOTION FOR A 7-DAY EXTENSION

The government respectfully requests a 7-day extension of time, to and including March 8, 2024, in which to file the government's responsive brief. This motion is unopposed. In support of this motion, counsel state as follows:

1. This appeal arises from plaintiffs' challenge to Department of Agriculture rules governing bioengineered food disclosure standards. Plaintiffs contend that the rules are arbitrary and capricious and inconsistent with the governing statute. On September 13, 2022, the district court vacated one portion of the regulations and remanded to the agency without vacatur, and the district court otherwise ruled for the government.

2. Following a 60-day extension of time to file the opening brief as well as further proceedings before the district court about whether the district court had issued a final, appealable judgment, plaintiffs filed their opening brief on September 5, 2023. Following three extensions, the government's and intervenors' responsive briefs are currently due on March 1, 2024.

3. The government respectfully requests a further 7-day extension for the appellees to file their responsive briefs, to and including March 8, 2024. The requested extension is necessary to ensure adequate time to complete and file the government's brief. Plaintiffs' opening brief raises a number of issues that involve a complex statutory scheme and a particularly voluminous administrative record. Undersigned counsel have had and have a number of deadlines and other work obligations that are making it difficult to file a brief by March 1, including a number of internal or otherwise non-public deadlines related to pending matters. *See, e.g., United States v. California Stem Cell Treatment Center*, No. 22-56014 (9th Cir.) (oral argument held February 7, 2024) (Jed); *American First Legal Foundation v. USDA*, No. 23-5173 (D.C. Cir.) (response brief

filed February 2) (Stern); *Washington v. The Geo Group, Inc.*, No. 21-36025 (9th Cir.) (amicus brief filed February 21) (Stern); *McCoy v. ATF*, No. 23-2085 (4th Cir.) (reply brief due February 26, as extended) (Stern). Additionally, undersigned counsel with supervisory responsibility for the government's brief will have pacemaker surgery next week that will temporarily prevent him from maintaining his usual work schedule.

4. Undersigned counsel represent that they have exercised diligence, they intend to file the brief within the time requested, and the court reporter is not in default.

5. The government has contacted counsel for the plaintiffs-appellants and intervenor-defendants-appellees, who represent that they do not oppose this motion.

6. I declare pursuant to 28 U.S.C. § 1746 and Ninth Circuit Rule 31-2.2 that the foregoing is true and correct.

CONCLUSION

For the foregoing reasons, the Court should extend the deadline to file the responsive brief by 7 days, to and including March 8, 2024.

Respectfully submitted,

MARK B. STERN

s/Adam Jed

ADAM C. JED

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FEBRUARY 2024

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on February 21, 2024, I filed and served the foregoing by using the appellate CM/ECF system.

/s/ Adam Jed
Adam C. Jed

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with Federal Rule of Appellate Procedure 27(d)(1) because it has been prepared in 14-point Garamond, a proportionally spaced font. I further certify that it complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 440 words according to the count of Microsoft Word.

/s/ Adam Jed
Adam C. Jed